



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

CHART

January 7, 2013

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Pedro Jiminian**
Tax Registry No. 945856
Quartermaster Section
Disciplinary Case No. 2011-4989

The above named member of the service appeared before Assistant Deputy Commissioner Amy J. Porter on September 28, 2012 and was charged with the following:

DISCIPLINARY CASE NO. 2011-4989

1. Said Police Officer Pedro Jiminian, while off-duty and assigned to the 76th Precinct, on or about June 1, 2011, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did engage in a physical altercation with Person A.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT – PROHIBITED
CONDUCT GENERAL REGULATIONS**

2. Said Police Officer Pedro Jiminian, while off-duty and assigned to the 76th Precinct, on or about June 1, 2011, having been involved in an unusual police occurrence did fail and neglect to request the response of a patrol supervisor, precinct of occurrence.
(As amended)

P.G. 212-32, Page 1, Paragraph 2 and Note

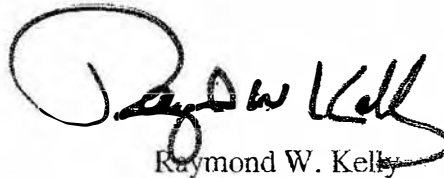
**OFF DUTY INCIDENTS
INVOLVING UNIFORMED
MEMBERS OF THE SERVICE
COMMAND OPERATIONS**

DISCIPLINARY CASE NO. 2011-4989

POLICE OFFICER PEDRO JIMINIAN

In a Memorandum dated November 19, 2012, Assistant Deputy Commissioner Amy J. Porter found Police Officer Jiminian Guilty of Specification Nos. 1 and 2 in Disciplinary Case No. 2011-4989. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

The misconduct in this matter warrants that Police Officer Jiminian forfeit thirty (30) suspension days (already served).

A handwritten signature in black ink, appearing to read "Raymond W. Kelly". The signature is stylized with a large, circular initial "R" and a long, sweeping underline.

Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

November 19, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Pedro Jiminian
Tax Registry No. 945856
Quartermaster Section
Disciplinary Case No. 2011-4989

The above-named member of the Department appeared before me on September 28, 2012, charged with the following:

1. Said Police Officer Pedro Jiminian, while off-duty and assigned to the 76th Precinct, on or about June 1, 2011, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did engage in a physical altercation with Person A.¹

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2. Said Police Officer Pedro Jiminian, while off-duty and assigned to the 76th Precinct, on or about June 1, 2011, having been involved in an unusual police occurrence did fail and neglect to request the response of a patrol supervisor, precinct of occurrence. (*As amended*)

P.G. 212-32, Page 1, Paragraph 2 and Note -- OFF DUTY INCIDENTS
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The Department was represented by Pamela Naples, Esq. and Sandra Suweidan Esq., Department Advocate's Office, and Respondent was represented by John Tynan, Esq.

¹ Person A was never referred to during the trial as "Person A". Her name was given as Person A.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification No. 1 and Guilty of Specification No. 2.

INTRODUCTION

Respondent and Person A (hereinafter Person A) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] they lived together for about four years. On June 1, 2011 Person A filed a complaint and Respondent was arrested for Strangulation 2nd degree and Assault 3rd degree. In September 2011, the [REDACTED] District Attorney's office dismissed all charges against Respondent. After the charges were dismissed, Respondent and Person A resumed living together.

It is not disputed that at around 3:00 am Person A awoke and became worried that Respondent had not returned home from the bar where he worked. She went downstairs and onto the street to look for his car in the spot where he always parks. When she did not see his car there, she became more concerned and began to search the block. When she found his car parked a block away she called his cell phone. Respondent answered and said that he would be home soon.

Person A then observed Respondent leaving the apartment building of a female employee from his bar and assumed he was having an affair.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Thomas Boyle and Sergeant Christopher Connolly. The Department also placed in evidence an audio recording and transcript of an official Department interview given by Person A.

Sergeant Thomas Boyle

Boyle has been employed by the Department for 19 years. For nine years he has worked at the 72 Precinct where he worked as Patrol Sergeant and then for three years doing crime analysis. For the past five years he has held the position of the Business Conditions Sergeant.

On June 1, 2011 Boyle was the assigned Patrol Supervisor. At about 1:20 pm he responded to a radio run regarding a family dispute involving an off-duty member in the 72 Precinct. He met with Person A in her home where he spoke to her. She said that earlier that day she had a physical altercation with Respondent.

Person A said that after she discovered Respondent leaving another woman's home, she confronted him and they argued on the street. Respondent asked her to come inside their residence so as not to alarm the neighbors.

According to what she told Boyle, when the two returned to their residence, the altercation became physical. Boyle stated that Person A told him that she

scratched Respondent's face, Respondent grabbed her arm and she was thrown to the ground.

Boyle observed red marks on Person A's arm, her neck and her right knee. She did not complain about any pain. Boyle instructed her to come back with him to the 72 Precinct as part of his investigation. There she was interviewed in the Domestic Violence Room. During her interview, Boyle said he heard for the first time Person A say that she may have gone unconscious and been choked by Respondent. Boyle was not present for this entire interview, but was in and out of the room.

On cross-examination, Boyle stated that Person A did not request medical attention when he interviewed her at her home or when she was at the precinct.

Sergeant Christopher Connolly

Connolly has been employed by the Department for 16 years. For the past 7 years he has been assigned to the [REDACTED] Investigations Unit where he investigates allegations of police misconduct.

On June 1, 2011 he was assigned to investigate a physical dispute involving Respondent and Person A. He also observed bruises located on Person A's neck, arm and right knee [Department Exhibit (DX) 2, 13 photographs of Person A's bruises].

Connolly also testified that Person A said she discovered Respondent leaving another woman's building. However, he stated that Person A informed him that the physical altercation occurred not when the couple came back to the residence

(around 3:00 am) but at 5:00 am and took place outside the building. Person A told him that the couple agreed to leave their home to speak to this other woman together so that Respondent could prove to her there was no romantic relationship. But when they were outside on the street Respondent started walking in the opposite direction.

According to Connolly, that was when Person A jumped on Respondent and started scratching him. Respondent then became angry and held her in a bear hug. He came up behind her, grabbed her, lifted her up and brought her into the vestibule of their house. Connolly testified that Person A said that Respondent placed his hands on her throat and squeezed it.

When Respondent was arrested, Connolly prepared a form for the District Attorney's Office listing the physical injuries he observed on Person A and Respondent (DX 3, Domestic Violence Page Required for [REDACTED] Precincts).

On cross-examination, Connolly testified that on the day of the alleged incident, he observed a scratch on Respondent's face.

Person A

Person A did not respond to the Department's subpoena to testify before this court. The Department submitted an transcript and audio recording (DX 1 and DX 1A) of Person A's interview on June 1, 2011 at 6:30 pm. A summary of the relevant portions of this interview follows.

After discovering Respondent leaving another woman's house, Person A started screaming at him. Her screams caused such a commotion on the street that a resident came out of her house to see what the trouble was. Respondent then convinced

her to return home with him. But when they returned, she would not stop arguing with him. He wanted to leave. She would not let him. Finally, he told her he would take her to the other woman's house so she could "see that nothing's going on."

But as soon as they were outside, Respondent began walking in the opposite direction from where the woman lived. Person A grabbed him and slapped him hard. She said, "I know I scratched him because he was hurt." He became angry and started running towards her. She became afraid and started running away from him. He grabbed her. At this point in the interview, Person A seemed to remember that she tried to hit him with some sort of object:

And I got something that was on the - - now I'm thinking about it. Something I had on the floor in the house. So I was going to make him believe he's a big guy. Look at me, like I'm, he's taller than me. So I'm like, I'm going to, I'm going to hit you. But he hold me tight. I guess that's how I got the bruises. . . . It, um, a piece of, um, something I don't remember. I don't know. I was, like— I don't know, I was like, I'm going to, I'm going to But I was trying to, to make him—I don't know what I was thinking. I didn't. And when I I let that go. He grabs me, and like when he did that he started to, like, go like this.

One of the investigators then asked her if Respondent was choking her. With further prompting, she said yes. After another investigator advised Person A to "just tell the story," she explained,

And then when he, um, when he did that, he started to put a lot of pressure on my neck. And, you know, he didn't realize that he was doing that. And then when I fell on the floor he, he told me like, "What happened Person A?" He say like, "Oh my God lady what's wrong with you? Are you okay?" Like he panic."

Many questions followed to determine whether Person A passed out or was able to breathe. When asked if she was getting lightheaded, she replied,

No, I don't think so, but I was freaking out more than anything. And then when I fell, um, he, he tells me like, "Are you okay? Are you okay?" And then he picks me up and he takes me to the, to the room and he gives me water and he puts water on me, and like are you okay? And then that's what happened, like physical. After that we just, um, I think we laid down. Like he, he went to sleep. I went to sleep, and then after that, um, he was getting ready to go to work and we got into another argument, and I told him please don't come back.

She felt that since Respondent was unfaithful to her, he should be the one to leave.

When Person A told Respondent not to come home, he replied, "If anything, you have to leave the house because this is my house." Person A told him that the kids should not have to move. He told her he would keep custody of the children. She described being concerned about her children and where she would go:

"So this is why I, I made the decision. . . . I don't have like bad intentions, or, but I have to put my kids before and myself because he's not thinking of me. So that's why."

With these words, Person A indicated her primary reason for reporting Respondent.

Person A described that she slapped and scratched Respondent many times.

PERSON A: "I scratched him, I scratched him so many times because when I slap him I scratch him. When I went to the house, to the girls house, I scratch him. And he has a scratch here, so you

LT. [TULLY]: Okay.

PERSON A: You know? I got upset, I scratched him.

Tully then interrupted and asked how long Respondent was choking her. Person A said it was fast. After being asked how fast, she said two or three seconds. "That fast?" asked Tully. When asked how she fell to the ground, she responded, "I don't know if I tripped or, I don't know."

Her interviewers continued to ask Person A about her injuries and how she got them. Her answers are vague. They are hard to understand partly because, throughout the questions and answers, the interviewers and Person A are gesturing to different parts of her body.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent was appointed to the Department in January 2008.

Respondent testified that when Person A discovered him leaving the other woman's house she started "swinging" at him, trying to hit him. Back at their home they continued to argue and she was punching him. When she tried to scratch him, he held her by both of her arms. He held her arms so that she could not hit him. When he tried to leave the house she tried to block the door and started "swinging" at him again. He decided to stay home and went to sleep.

On cross-examination, the Respondent agreed that the altercation with Person A was an off-duty incident that he should have reported.

FINDINGS AND ANALYSIS

In Specification No. 1, it is alleged that Respondent “did engage in a physical altercation with Person A.” The evidence demonstrated that there was a physical altercation. Respondent admitted that there was a physical altercation.

Respondent is found Guilty of Specification No. 1.

In Specification No. 2, it is alleged that Respondent “having been involved in an unusual police occurrence did fail and neglect to request the response of a patrol supervisor, precinct of occurrence.” Respondent admitted that there was a physical altercation. Respondent admitted that he should have reported the incident.

Respondent is found Guilty of Specification No. 2.

PENALTY

In order to determine an appropriate penalty, Respondent’s service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 7, 2008. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department recommends that a penalty of 30 suspension days, previously served, be imposed.

The Respondent recommends that a penalty of 15 suspension days, previously served, be imposed with a credit for the other 15 suspension days.

Although there was a physical altercation, the evidence demonstrated that Respondent did not initiate it. Person A indicated that she was about to attack the

Respondent with an object and that Respondent may have been defending himself. While she was attacking him, Respondent attempted to hold Person A still to control her. She did not seem to believe that Respondent intended to choke her. When he thought that she might be hurt, Respondent released her immediately, and carried her to their bed. They slept together that night.

In the morning they argued again. Person A told Respondent not to come home and he told her she would have to be the one to leave since he owned the house and that the children would stay with him. What finally prompted Person A to report the incident was her fear of having to leave the house and losing her children.

When asked about her bruises, she was not sure if she got them when Respondent was attempting to restrain her while she was hitting him or whether she may gotten them when she tripped and fell to the ground. She never sought medical attention.

Person A's own statements do not clearly support the hearsay testimony presented by the Department's witnesses that the Respondent assaulted Person A. Nor do her statements support the Department's contention that Person A's bruises resulted from a deliberate physical attack on her by Respondent.

At some point in the interview her interrogators coached Person A to elicit depictions of being choked and not being able to breathe. But she was unsure whether her problem breathing had to do with her being just "freaked out." At one point when asked about her description of Respondent holding her "in a big hug," Person A explained, "Yeah he went like that to hold me to control myself."

When listening to the recording of Person A's interview, this Court heard several unexplained breaks which were not noted in the transcript. It was clear that

Person A was using physical gestures to explain the various positions and actions of the couple during their argument. She was receiving phone calls and text messages and sounding distracted during the interview.

Deprived of the opportunity to observe Person A's live testimony under direct and cross-examination, this Court cannot conclude an assault or any choking did occur. If there was any choking, Person A indicated that it was brief, accidental and a part of a self-defensive maneuver by Respondent to protect himself from her own slapping, pummeling, scratching and potential further violence. Based on Person A's failure to respond to the Department's subpoena, the Department was unable to demonstrate that Respondent initiated any part of this physical altercation. This missing piece of proof renders the Department's penalty recommendation excessive.

The Respondent served a period of 30 days on pre-trial suspension in this matter. Considering all the abovementioned factors, it is recommended that a penalty of 15 suspension days, previously served, be imposed. It is further recommended that the additional 15-day period during which the Respondent had been suspended be restored to him.

Respectfully submitted,



Amy J. Porter
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER PEDRO JIMINIAN
TAX REGISTRY NO. 945856
DISCIPLINARY CASE NO. 2011-4989

In 2011, Respondent received an overall rating of 3.5 “Highly Competent/Competent” on his annual performance evaluation. He was rated 3.0 “Competent” in 2009 and 2010. [REDACTED]

[REDACTED] Respondent has no prior formal disciplinary record.

For your consideration.



Amy J. Porter
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Pedro Jiminian
Tax Registry No. 945856
Disciplinary Case No. 2011-4989
SUPPLEMENTAL MEMORANDUM

I have reviewed the decision of Assistant Deputy Commissioner Trials Amy J. Porter. While I concur with her finding that Respondent should be found guilty of both specifications, I disagree with the penalty recommendation.

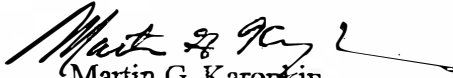
Looking at the photographs of Person A in evidence (DX 2), it is clear that the large bruise on her neck was not the result of a fall or "a big hug" intended merely to help her control herself as suggested in the decision. The bruise is clearly the result of assaultive conduct.

A Respondent is only entitled to return of pretrial suspension days where there has been no finding of guilt of administrative disciplinary charges. Where there has been a finding of guilt of an administrative disciplinary charge, as there has been in this case, Respondent is not entitled to the restoration of any pretrial suspension days, [Buric v. Safir, 4 A.D.3d 160, (2004); motion for leave to appeal denied, Buric v. Safir, 2 N.Y. 3d 706 (2004)].

Under the circumstances of this case, the return of any suspension days to Respondent would send a very poor message regarding the commitment of this Department to recognize and discourage domestic violence.

. The Department has recommended a penalty which is the minimal appropriate penalty under the circumstances. I see no reason to disturb the Department's recommendation and therefore I recommend that Respondent forfeit 30 days previously served on suspension.

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner Trials